Franchise Tax Board

ANALYSIS OF AMENDED BILL

Author:	Correa	Analyst:	Jeff Garnier	Bill Number:	AB 2871
Related Bills:	See Leg. History	Telephone:	845-5322	Amended Date:	June 15, 2000
		Attorney:	Patrick Kusiak	Sponsor:	

SUBJECT: Long-Term Care Caregiver Credit

_____ DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended _________.

X AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

_____ AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as introduced/amended _________.

_____ FURTHER AMENDMENTS NECESSARY.

_____ DEPARTMENT POSITION CHANGED TO _____________________.

_____ REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED/AMENDED ___________ STILL APPLIES.

X OTHER - See comments below.

SUMMARY OF BILL

This provision would provide for a $500 non-refundable credit to taxpayers who are eligible caregivers for each applicable individual in need of long-term care. An applicable individual may be the taxpayer, spouse of the taxpayer, or a qualifying dependent, as defined, who has been certified to have long-term care needs. The credit would not be allowed to married couples filing a joint return with adjusted gross income (AGI) of $100,000 or more and $50,000 or more for all other individuals.

SUMMARY OF AMENDMENTS

Prior to the June 15, 2000, amendments, the bill contained intent language regarding education. The amendments removed the intent language and replaced that language with the long-term care credit language.

EFFECTIVE DATE

This provision would be effective immediately upon enactment and operative for taxable years beginning on or after January 1, 2000, and before January 1, 2005.

LEGISLATIVE HISTORY

AB 2268 (2000) contains the same provisions as this bill except AB 2268 does not contain the AGI limitation.

AB 2096 (2000) would provide for a $500 credit to taxpayers who provide long-term care to elderly individuals who reside with the taxpayer.

Board Position:			Department Director	Date
_____ S	_____ NA	_____ NP	Gerald H. Goldberg	6/30/00
_____ SA	_____ O	_____ NAR		
_____ N	_____ OUA	X PENDING		

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AB 2281 (2000) would allow 25% of the cost of long-term insurance as a deduction starting in the 2002 tax year and incrementally increasing to 100% beginning in the 2007 tax year.

SPECIFIC FINDINGS

Under **federal law** long-term care services are defined as services necessary to diagnose, prevent, cure, treat, mitigate, rehabilitate, and maintain or to provide personal services to a chronically ill individual. A chronically ill individual is generally defined as an individual certified annually by a licensed health care practitioner as being unable to perform (without substantial assistance) at least two of the following activities of daily living (ADLs): eating, toileting, transferring, bathing, dressing, and continence or requires substantial supervision to protect such individual from health and safety concerns due to severe cognitive impairment.

Current **federal law** specifically allows a deduction for medical expenses for the unreimbursed expenses for qualified long-term care services provided to the taxpayer, the taxpayer’s spouse, or the taxpayer’s dependents (subject to the present-law floor of 7.5% of AGI). Amounts received under a long-term care insurance contract (regardless of whether the contract reimburses expenses or pays benefits on a per diem or other periodic basis) are treated as reimbursement for expenses actually incurred for medical care.

Long-term care insurance premiums, like medical care insurance premiums, are explicitly treated as medical expenses and are deductible on a graduated scale based on the individual’s age before the close of the taxable year.

Age of Individual	Maximum Deduction
40 or less	$200
More than 40 but less than 50	375
More than 50 but less than 60	750
More than 60 but less than 70	2,000
More than 70	2,500

Current law also excludes from gross income of the employee any employer contributions to accident and health plans, including contributions to cafeteria plans or “flexible spending arrangements,” as defined. In addition, current law excludes from gross income the receipt of benefits from long-term care insurance.

Current **federal law** imposes an information reporting requirement on insurance companies paying long-term care benefits. In addition to the normal reporting requirements (identification of the recipients and amounts paid out by the company), the insurance company also must include the type of policy issued to the recipient. A penalty excise tax may be imposed on issuers of long-term care insurance companies that fail to satisfy the above requirements.

Current **California law** conforms to federal tax provisions related to long-term care.

Federal law allows a $2,750 (for 1999) exemption (deduction from income) for each dependent of the taxpayer. To qualify as a dependent, an individual must:

(1) be a specified relative or member of the taxpayer's household;
(2) be a citizen or resident of the U.S. or resident of Canada or Mexico;
(3) not be required to file a joint tax return with his or her spouse;
(4) have gross income below the dependent exemption amount ($2,750 in 1999) (the gross income threshold test) if not the taxpayer's child; and
(5) generally receives over half of his or her support from the taxpayer (the support test).

California law conforms to the federal definition of a dependent. However, in lieu of a $2,750 deduction from income, the state allows a credit, $227 for 1999, that is applied against the taxpayer's tax liability.

Specific Findings

This bill would provide a $500 non-refundable credit for each applicable individual for whom the taxpayer presumably provides long-term care. An applicable individual may be the taxpayer, spouse of the taxpayer, or a qualifying (under this bill) dependent who has been certified to have long-term care needs.

For purposes of this credit, **this bill** would broaden the definition of a dependent (IRC Section 152/RTC Section 17056) in two ways. First, the gross income threshold test would increase to the sum of the federal personal exemption amount, the federal standard deduction, and the additional federal deduction for the elderly and blind (if applicable). In 1999, the gross income threshold would generally be $7,050 for a non-elderly dependent and $8,100 for an elderly or blind dependent. The threshold amounts are calculated using the federal amounts.

Second, the support test would be deemed met if the taxpayer and an individual with long-term care needs reside together for a specified time period. The length of the specified period would depend on the relationship between the taxpayer and the individual with long-term care needs. The specified period would be over half the year if the individual is an ancestor or descendant of the taxpayer or the taxpayer’s spouse. Otherwise, the specified period would be the full year. If more than one taxpayer is an eligible caregiver for the same individual with long-term care needs, then those taxpayers generally must designate the taxpayer who would claim the credit. If the taxpayers fail to do so or if they are married to each other and filing separate returns, then only the taxpayer with the higher modified federal AGI would be eligible to claim the credit.

Under **this bill**, an individual age six or older would be considered to have long-term care needs if he or she were certified by a licensed physician (prior to the filing of a return claiming the credit) as being unable for at least six months to perform at least three ADLs without substantial assistance from another individual due to a loss of functional capacity (including individuals born with a condition that is comparable to a loss of functional capacity).

A child between the ages of two and six would be considered to have long-term care needs if he or she were certified by a licensed physician as requiring substantial assistance for at least six months with at least two of the following activities: eating, transferring, and mobility.

A child under the age of two would be considered to have long-term care needs if he or she were certified by a licensed physician as requiring for at least six months specific durable medical equipment (for example, a respirator) by reason of a severe health condition or requiring a skilled practitioner trained to address the child's condition when the parents are absent.

As under the present-law rules relating to long-term care, ADLs would be eating, toileting, transferring, bathing, dressing, and continence. Substantial assistance would include both hands-on assistance (the physical assistance of another person without which the individual would be unable to perform the ADL) and stand-by assistance (the presence of another person within arm's reach of the individual that is necessary to prevent, by physical intervention, injury to the individual when performing the ADL).

As an alternative to the 3-ADL test described above, an individual would be considered to have long-term care needs if he or she were certified by a licensed physician as (a) requiring substantial supervision for at least 180 consecutive days (a portion of which occurs within the taxable year) to be protected from threats to health and safety due to severe cognitive impairment and (b) being unable for at least 180 consecutive days (a portion of which occurs within the taxable year) to perform at least one or more ADLs or to engage in age appropriate activities as determined under regulations prescribed by the Franchise Tax Board (FTB), in consultation with the Secretary of Health and Welfare Agency.

This bill would provide that a portion of the period certified by the physician would have to occur within the taxable year for which the credit is claimed. After the initial certification, individuals would have to be recertified by their physician within three years of the due date for filing the return of tax for the taxable year (without extensions) or such other period as the FTB prescribes.

This bill would require the taxpayer to provide a correct taxpayer identification number for the individual with long-term care needs for which the credit is to be claimed, as well as a correct physician identification number for the certifying physician on the tax return. Failure to provide correct taxpayer and physician identification numbers would be subject to the mathematical error rule. Under that rule, the FTB may deny the credit and summarily assess additional tax due without sending the individual a notice of proposed assessment. Further, the taxpayer could be required to provide the physician certification upon the FTB’s request.

This bill would provide that no credit would be allowed to married couples filing a joint return with federal AGI of $100,000 or more and $50,000 or more for all other individuals.

Policy Considerations

This credit would not be limited to taxpayers or applicable individuals who reside in California.

This bill would not actually require the taxpayer to provide long-term care to an applicable individual. This bill would only require the applicable individual to be certified as needing long-term care and that the applicable individual be the taxpayer, taxpayer's spouse, or a qualifying dependent of the taxpayer.

This bill requires that any FTB regulations be adopted in consultation with the Health and Welfare Secretary governing physician certification based on one or more ADL or inability to perform age appropriate activity. Perhaps such regulations are more properly adopted by Health and Welfare Agency. The FTB would rely solely on the physician's certification.

FISCAL IMPACT

Departmental Costs

This bill would not significantly impact the department's costs.

Tax Revenue Estimate

Revenue losses under the Personal Income Tax Law for a stand-alone state credit are estimated as follows:

Revenue Impact of AB2871		
For Taxable Years Beginning 1/1/2000		
Assumed Enactment After 6/30/00		
(In Millions)		
2000-01	2001-02	2002-03
-$39	-$33	-$36

This analysis does not consider the possible changes in employment, personal income, or gross state product that could result from this proposal.

Tax Revenue Discussion

The impact of this bill would depend upon the number of taxpayers eligible to claim the credit (estimated to be approximately 135,000), the average credit claimed, and the average credit applied against available tax liabilities.

This estimate is based on the estimate calculated by the U.S. Treasury for a similar federal credit adjusted for California.

Starting with the federal impact on liabilities:

1. The California eligible population is assumed to be 11% of the nation.
2. Because California tax rates and proposed credit are lower than federal tax rates and $1,000 proposed federal credit, it is assumed that the credit absorption rate would be 75% of the federal (a greater portion of the calculated credit would not be applied because of insufficient tax liabilities).

3. Because the income caps proposed in federal legislation are greater than the income caps proposed in this bill, it is assumed that the eligible population would be 92% of the federal estimate. This assumption is based on the department's Personal Income Tax model for taxpayers below the federal income caps.

BOARD POSITION

Pending.